

BG 98-1

Tax Type: BINGO/CHARITABLE GAMES

Issue: Revocation of Charitable Games Act License

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket No.
OF THE STATE OF ILLINOIS)	License No.
v.)	
ABC CORPORATION)	John E. White,
Licensee)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Debra Schafer, Sreenan & Cain, P.C., appeared for ABC CORPORATION Mark Dyckman and Alan Osheff, Special Assistant Attorneys General appeared for the Illinois Department of Revenue.

Synopsis:

This matter involves the Department's intent to revoke the license of ABC CORPORATION ("ABC" or "ABC"), as a charitable games supplier pursuant to the Charitable Games Act.

During a pre-hearing conference the parties agreed the issues to be resolved included a determination of whether ABC engaged in acts prohibited by §§ 6 and/or 8 of the Charitable Games Act ("the CGA"), 230 ILCS 30/1 *et seq.*, at charitable games events conducted on 6/2/95, 6/3/95, 7/6/95 and 7/31/95. The parties also disputed the nature and length of the appropriate penalty, should it be determined ABC, in fact, engaged in activities prohibited by the CGA. I have reviewed the evidence adduced at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend the issue be resolved in favor of the Department, and that ABC's

supplier's license be revoked for a period of one year.

Findings of Fact:

Facts Regarding ABC's Business:

1. ABC is a supplier of gaming equipment used, pursuant to the CGA, at charitable games events held in Illinois. *See* Department Ex. 1; Department Ex. 4, attachment 4 (copy of ABC's license application for which supplier's license issued on 12/1/94).
2. Eligible organizations hire ABC to supply gaming equipment for use in charitable games events. *See, e.g.,* Hearing Transcript ("Tr."), p. 81 (JANE DOE ("J. DOE")).
3. ABC's business is located at FICTITIOUS ADDRESS in Illinois. Department Ex. 4, attachment 4.¹
4. PRESIDENT was named as ABC's president, vice-president and secretary on the application ABC filed to seek the supplier's license the Department issued on 12/1/94. *Id.*
5. ABC maintained a business relationship with another company, FICTITIOUS BUSINESS, Inc., which company performed services at charitable gaming events at which ABC was hired to provide equipment. Tr. pp. 306-07, 344-45, 409 (PRESIDENT).
6. M. DOE, PRESIDENT' daughter, and the former secretary –treasurer for ABC

¹ Department exhibit 4 is a comprehensive report written by a Department employee assigned to the Bureau of Criminal Investigation. Attached to that report are a number of exhibits, and exhibit 4 is a copy of the license application ABC filed to obtain its supplier's license for 1995.

- (*see* Department Ex. 4, attachment 4), was a ABC employee in 1995. Department Ex. 7. Although PRESIDENT testified that M. DOE left ABC's employ in Spring 1995, ABC introduce no books and records to corroborate PRESIDENT' claim that his daughter M. DOE stopped working for ABC.
7. A search of FICTITIOUS BUSINESS' office yielded no payroll records, payroll checks, or W-2 forms, identifying M. DOE or M. DOE as an employee of FICTITIOUS BUSINESS. Tr. p. 491 (testimony of Gerald Gaida).
 8. FICTITIOUS BUSINESS was located in the same building as was ABC, in a different office. *See, e.g.*, Department Exs. 13-14; Tr. p. 238-39 (testimony of R. DOE ("R. DOE")).
 9. FICTITIOUS BUSINESS was incorporated by S. DOE, who is PRESIDENT' sister-in-law. Tr. pp. 295-96 (testimony of PRESIDENT).
 10. B. DOE, commonly referred to as "B. DOE", and M. DOE's boyfriend, was an employee of FICTITIOUS BUSINESS. Department Ex. 9; Tr. pp. 295 (PRESIDENT).
 11. ABC and FICTITIOUS BUSINESS used the same telephone number. Department Exs. 13-14; Tr. pp. 139 (D. DOE). While PRESIDENT testified that FICTITIOUS BUSINESS took over ABC's telephone number, and ABC acquired a new telephone number (*see, e.g.*, Tr. p. 408 (PRESIDENT)), ABC introduced no books and records to support that testimony.
 12. ABC and FICTITIOUS BUSINESS were identified as the return addressee on separate flyers, each of which used the same substantial structure and layout and each of which shared the same substantial content. Department Exs. 13-14.
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13. PRESIDENT testified that B. DOE, as an employee of FICTITIOUS BUSINESS, prepared both flyers, even though ABC was named as the return addressee on Department Ex. 13 (flyer titled, ABC Casino Players News), and FICTITIOUS BUSINESS was not identified as either the author, publisher, or return addressee for that flyer. Tr. pp. 317-21 (PRESIDENT).
14. The ABC Casino Players News flyer bore a date of Fall 1994, and indicated that the flyer was the third flyer to be issued for volume 1 of that periodical. Department Ex. 13.
15. The ABC Charitable Games News flyer bore a date of January 1995 and indicated that it was the first flyer to be issued in volume 2. Department Ex. 14.
16. Both flyers published a list of upcoming charitable games events, and advertised specific characteristics of games to be conducted at those events. Department Exs. 13-14.
17. A. DOE worked as a dealer at charitable games at which ABC was hired to provide equipment. Tr. pp. 149-63 (A. DOE).
18. A. DOE was paid for his work by being allowed to keep tips given to him by the persons playing the games, and by keeping the excess amounts over the hourly quota set for the game being played. Tr. pp. 159-60 (A. DOE).
19. A. DOE worked “off the books” at these charitable games events, that is, without any record being made to document the compensation he received for such work for tax, withholding or unemployment purposes. Tr. pp. 159-60 (A. DOE).
20. A. DOE learned of the sites of the charitable games events at which he worked via newsletters in which such events were listed. Tr. pp. 149, 164 (A. DOE); *see also*

Department Exs. 13-14 (listing charitable games events).

21. Once at the particular charitable games event, A. DOE would receive his work assignments for that night from either M. DOE or from B. DOE. Tr. pp. 157-58 (A. DOE).
22. A. DOE believed he was working for ABC, even though he ordinarily received instructions from M. DOE or from B. DOE. Tr. pp. 169-70, 175-76 (A. DOE).
23. A group of people associated with ABC and with FICTITIOUS BUSINESS met at the office of XYZ COMPANY, where ABC stored equipment (*see* Department Ex. 4, attachment 4, (unnumbered) p. 5), in March 1995. Tr. pp. 161, 180-81 (testimony of A. DOE); *see also* Department Ex. 13, p. 1 (XYZ COMPANY only advertiser identified in ABC Casino Players News flyer); Department Ex. 14, p. 5 (XYZ COMPANY only advertiser identified in ABC Charitable Games News flyer).
24. Present at that March 1995 meeting were PRESIDENT, M. DOE PRESIDENT, B. DOE, A. DOE and others, including persons who worked as dealers at charitable games events at which ABC was hired to supply equipment. Tr. pp. 161-63, 180-81 (A. DOE).
25. At that March 1995 meeting, PRESIDENT and B. DOE extolled the dealers to perform better, i.e., produce more revenue, at charitable games events. Tr. pp. 162, 184 (A. DOE). PRESIDENT, however, denied being at that meeting. Tr. p. 442 (PRESIDENT).

Facts Regarding the Charitable Gaming Events Held by the ABC Jaycees on 3/25/95, 5/13/95 and 6/3/95:

26. The Department informed ABC that it would seek to revoke ABC's license

- because employees, owners or officers of ABC participated in the management or operation of the charitable games events sponsored by the ABC Jaycees on June 3, 1995. Department Ex. 1, pp. 2-3 (1/19/96 Notice of Revocation).
27. The Department later amended its Notice of Revocation to inform ABC that it would seek to revoke ABC's license because it participated in the management or operation of the charitable games events sponsored by the ABC Jaycees on March 25, 1995 and on May 13, 1995, and that it recruited and provided the individuals who worked those games. Department Ex. 1, p. 6.
28. JANE DOE is, and was in 1995, a board member of the ABC Jaycees. Tr. pp. 79-80 (J. DOE); Department Group Ex. 4, attachment 3. She was responsible for conducting charitable games events sponsored by the ABC Jaycees in 1995. Department Group Ex. 4, attachment 3; Tr. pp. 80-84 (J. DOE).
29. The ABC Jaycees hired ABC to be the supplier regarding those charitable games events. Tr. p. 80 (J. DOE).
30. Approximately one month before the 3/25/95 event, J. DOE informed PRESIDENT that the Jaycees would not have enough volunteers available for that event. J. DOE recalled that PRESIDENT told her that he would be able to get a lot of people, and would take care of that. Tr. p. 82. At hearing, and when asked about that same conversation, PRESIDENT recalled that he told J. DOE, "Don't worry about it. They'll show up." Tr. pp. 461-62 (PRESIDENT). PRESIDENT denied supplying dealers for that event. Tr. p. 417 (PRESIDENT).
31. At the 3/25/95 event, J. DOE thought that the dealers were Jaycees, but she knew that they were not ABC Jaycees. Tr. pp. 82-83 (J. DOE).

32. Either PRESIDENT or M. DOE was present at the 3/25/95 event at the Mulford Village Hall. Tr. pp. 82-84 (J. DOE).
33. J. DOE believed M. DOE was at the different charitable games events sponsored by the ABC Jaycees representing ABC because PRESIDENT told her that either he or M. DOE would be there. Tr. pp. 82-83, 87, 115-16 (J. DOE).
34. J. DOE saw M. DOE and R. DOE collect chips from the tables at the games at which either was present. Tr. p. 85 (J. DOE).
35. PRESIDENT told J. DOE to write checks to ABC and to FICTITIOUS BUSINESS regarding the charitable games events for which ABC was hired. Tr. pp. 100, 102 (J. DOE). J. DOE sent the checks to the same address at PRESIDENT' direction. Tr. p. 102 (J. DOE).
36. JANE DOE did not contact FICTITIOUS BUSINESS to hire its services regarding the charitable gaming events at which ABC is alleged to have committed acts prohibited by the CGA. *See* Tr. pp. 80-84, 98-100 (J. DOE).
37. PRESIDENT also directed J. DOE to write checks to TEMPLE regarding games played at the charitable games events. Tr. pp. 97-98; Department Ex. 3 (2 checks written by J. DOE to TEMPLE, one dated 3/25/95 in the amount of \$459, and one written on 5/13/95 in the amount of \$588).
38. J. DOE wrote checks to TEMPLE because of "a thing called 'progressive jackpot.'" Tr. p. 97 (J. DOE). Specifically, J. DOE described the progressive jackpot as:

... some kind of raffle. I don't know exactly how it works. That had something to do with the poker tables. And a name on a little ticket got put into a slot, and they drew something. That's why I guess I would consider it a raffle.

Tr. p. 97 (J. DOE).

39. PRESIDENT explained how the progressive jackpot games worked in the following manner:

... say there was \$300 possibly collected from that jackpot bet, the charity -- FICTITIOUS BUSINESS worked out an arrangement where they said, you know, you guys do what you want. But you got \$300 here. You should put \$100 in the kitty for the day that this thing gets hit. And basically TEMPLE was holding the kitty, the jackpot kitty. And there were some times I think it did get hit.

Tr. p. 348 (PRESIDENT).

40. On page 2 of the Fall 1994 issue of the ABC Casino Players News (Department Ex. 13, p. 2) and on the same page of the January 1995 issue of the ABC Charitable Games News (Department Ex. 14, p. 2), the following description of the “Chicago Stud Progressive Jackpot” is given:

Each player has the option of making this bet for \$1.00 so that they may be part of the [jackpot]. Players win all or part of the Jackpot with hands of a Royal Flush, Straight Flush, Four of a Kind, Full House or Flush.

Department Exs. 13-14, p. 2 (of each exhibit).²

41. Each of the flyers also contained a payout guide regarding the progressive jackpot games, which guide informed the reader that a royal flush would pay 100% of the progressive jackpot, a straight flush would pay 10% of the progressive jackpot, four of a kind would pay \$150, a full house would pay \$100, and a flush would pay \$75. *Id.*

² In Department Exhibit 13, the word “jackpot” is printed in bold, capitalized letters. In Department Ex. 14, the phrase “Gold Jackpot” is used where the bracketed word [jackpot] is quoted above.

42. If no one won the progressive jackpot by the end of the charitable games event, the jackpot would progressively increase (hence, the name) and be carried forward to different charitable events held on subsequent nights at different locations. *See* Tr. p. 98 (J. DOE); Department Exs. 13-14, p. 2 of each exhibit; *see also*, Tr. pp. 347-49 (PRESIDENT describing the progressive jackpot game).
43. J. DOE wrote checks payable to TEMPLE, at PRESIDENT' direction, because no one won the progressive jackpots during the events held by the ABC Jaycees. Tr. p. 98 (J. DOE).
44. While PRESIDENT testified that the charitable licensees who wanted to hold progressive jackpot games "got collectively involved" (*see* Tr. pp. 347-48) to conduct the progressive jackpot games, no competent evidence was offered to show that J. DOE or anyone else from the ABC Jaycees entered into an agreement with TEMPLE, or with any other charitable games licensee, to share proceeds from each licensee's respective charitable games events. *Compare* Tr. p. 97 (J. DOE) *with* Tr. pp. 347-49 (PRESIDENT).
45. Even if the progressive jackpot game described by PRESIDENT at hearing, and within ABC's and FICTITIOUS BUSINESS' flyers, were a raffle (*see* 230 **ILCS** 15/1 (definition of a "raffle" under the Raffles Act)), no evidence was introduced to indicate whether county officials sanctioned or did not sanction a raffle conducted at the charitable games events sponsored by the ABC Jaycees in 1995. 230 **ILCS** 15/2 (governing body of counties in Illinois license organizations eligible to operate raffles).
46. R. DOE was present and participated in the operation or management of

- charitable games events sponsored by the ABC Jaycees, at which ABC supplied equipment. Tr. pp. 84-85, 117 (J. DOE), pp. 201-16 (R. DOE); *see also* Department Ex. 10.
47. R. DOE worked for FICTITIOUS BUSINESS and then worked for ABC during 1995. Department Ex 8; Tr. pp. 202-06 (R. DOE).
48. While at the events held by ABC Jaycees, R. DOE, *inter alia*, collected chips from gaming tables (*see* Tr. p. 85 (J. DOE)), instructed others how to collect chips from gaming tables, and instructed others how to conduct games. Tr. p. 95 (J. DOE), p. 215 (R. DOE). R. DOE was not a bona fide volunteer recruited by the ABC Jaycees to participate in the management or operation of the games, and he was not identified as a volunteer on the list of persons allowed to participate in the management or operation of the games. Department Ex. 4, attachment 3 (RCG-2 (list of charitable workers)).
49. On 6/3/95, R. DOE was arrested for the offense of participating in the operation of a charitable game (230 **ILCS** 30/8) after acting as a blackjack pit boss at the event held by the ABC Jaycees. Department Ex. 10 (certified statement of disposition re: case no. 95 MC3-004097). R. DOE, however, was never convicted for that offense. *Compare* 730 **ILCS** 5/5-1-5 (definition of “conviction”) with 730 **ILCS** 5/5-1-21 (definition of “supervision”). Instead, R. DOE pled guilty to that offense, and received a term of supervision. *Id.* After successfully completing that period of supervision, and 80 hours of community service, the criminal complaint filed against R. DOE was discharged. Department Ex. 10.

Facts Regarding the Charitable Games Events Held by the CWS on 7/6/95:

50. The Department informed ABC that it would seek to revoke ABC's license because employees, owners or officers of ABC participated in the management or operation of the charitable games event sponsored by the CWS on July 6, 1995. Department Ex. 1, p. 3 (1/19/96 Notice of Revocation, ¶ 3), p. 5 (Amended Notice of Revocation, ¶ 5).
51. D. DOE was the president of the CWS ("CWS") in 1995. Tr. pp. 138, 141-42.
52. CWS was a charitable games licensee in 1995. Department Ex. 5, attachment 2 (including, *inter alia*, CWS's charitable games application for license, licenses); Tr. pp. 131-32 (D. DOE).
53. CWS hired ABC to supply charitable games equipment during the charitable games events it held in 1995, and D. DOE was the liaison between CWS and ABC. Department Ex. 5, attachment 2; Tr. p. 132 (D. DOE).
54. During the time she acted as liaison between the CWS and ABC, D. DOE contacted either a woman named Mary, M. DOE, or others for questions regarding charitable games events. Tr. pp. 132, 135-36, 145 (D. DOE).
55. During her contacts with M. DOE regarding the charitable gaming events, D. DOE believed that M. DOE represented ABC. *See* Tr. pp. 141-42, 145 (D. DOE).
56. Approximately one month before the 7/6/95 charitable games event sponsored by CWS and held at the Holiday Inn in Itasca, D. DOE had a telephone conversation with M. DOE regarding that upcoming event. Tr. pp. 135-36 (D. DOE). During that conversation, M. DOE told D. DOE that CWS would have to provide volunteers to deal at the event, to which D. DOE replied that CWS "could not handle [that]." Tr. p. 137. Then, M. DOE told D. DOE that "they would have

- people calling [her] with names.” *Id.*
57. D. DOE subsequently received telephone calls from persons whose names D. DOE included on a list of volunteers she sent to ABC. Tr. pp. 137, 142-43 (D. DOE).
58. That list of names was then sent to the Department, who wrote back to D. DOE to inform her that since the list was received by it less than 14 days before the upcoming event, the persons on that list would not be able to deal or take part in the management or operation of the charitable games. Department Ex. 5, attachment 2 (Department memo to CWS dated 7/3/95; list of CWS “members, employees or volunteers” submitted to Department by CWS, indicating receipt on 6/27/95).
59. CWS did not recruit any volunteers to deal at the 7/6/95 charitable games event. Tr. pp. 137-38 (D. DOE).
60. D. DOE learned about FICTITIOUS BUSINESS from material included in the same mailings CWS received from ABC. Tr. pp. 138, 141-42 (D. DOE).
61. D. DOE assumed the materials regarding FICTITIOUS BUSINESS, and instructions to pay ABC and FICTITIOUS BUSINESS using separate checks came from ABC, because she believed she was working with ABC. Tr. pp. 141-42 (D. DOE).

Facts Regarding the Charitable Games Event Held by the CCD on 6/2/95:

62. The Department informed ABC that it would seek to revoke ABC’s license because employees, owners or officers of ABC participated in the management or

operation of the charitable games event sponsored by the CCD (“CCD”) on June 2, 1995. Department Ex. 1, p. 2 (1/19/96 Notice of Revocation, ¶ 1), p. 5 (Amended Notice of Revocation, ¶ 1).

63. A. DOE was a dealer at the 6/2/95 event sponsored by CCD, and, along with others, was arrested at that event. Tr. pp. 168-71, 180 (A. DOE).

Facts Regarding the Charitable Games Event Held by the CCB on 6/31/95:

64. The Department informed ABC that it would seek to revoke ABC’s license because employees, owners or officers of ABC participated in the management or operation of the charitable games event sponsored by the CCB (“CCB”) on July 31, 1995. Department Ex. 1, p. 3 (1/19/96 Notice of Revocation, ¶ 4), p. 5 (Amended Notice of Revocation, ¶ 4).
65. On 2/15/95, PRESIDENT sent a letter via facsimile to EMPLOYEE, who worked for FICTITIOUS BUSINESS. Department Ex. 2. In that letter, which PRESIDENT signed, PRESIDENT informed EMPLOYEE that ABC would supply, *inter alia*, “10 Blackjack tables, 2 Crap tables, 1 Roulette table, 1 Money wheel and 1 Caribbean stud poker table” at events to be held on July 31, 1995 and on August 3, 1995, for \$3,330 per night. *Id.* PRESIDENT also described, more than 4 months before the first event was to take place, how the dealers at those events would be dressed. *Id.*
66. ABC used FICTITIOUS BUSINESS’s services, including the services of R. DOE, at the 7/31/95 event. *See* Tr. pp. 433-34, 442, 445 (PRESIDENT).
67. On 7/31/95, R. DOE was arrested for the offense of participating in the operation of a charitable game (230 ILCS 30/8) after acting as a blackjack pit boss at the

event held by the CCB, for which ABC was hired to provide charitable games equipment. Department Ex. 11 (copy of court supervision order entered in case no: 95 CM 4696). R. DOE received a term of supervision for that offense, also.

Id.

Conclusions of Law:

In 1986, the Illinois General Assembly passed the Charitable Games Act (“CGA”), “to provide methods of fund-raising for not-for-profit charitable organizations to enable them to meet their charitable purposes. Earnhart v. Director of Illinois Department of Revenue, 191 Ill. App. 3d 613 (1st Dist. 1989); 230 **ILCS** 30/1.1 (*formerly* Ill. Rev. Stat. ch. 120, ¶ 1121.1 (1986)). The court held that:

The legislative intent was to regulate strictly who may be licensed, as well as when and where charitable game events may be played, and to prescribe recordkeeping of funds raised, all in order to protect not-for-profit organizations and the people of the State of Illinois from the abuses associated with gambling.

Earnhart, 191 Ill. App. 3d at 621 (emphasis added).

Effective November 29, 1994, the Illinois General Assembly amended certain provisions within the CGA. *See* P.A. 88-699, Art. 90, § 90-8 (eff. Nov. 29, 1994). Specifically, the legislature amended § 2 of the CGA to include definitions of the terms “volunteer” and “person”. 230 **ILCS** 30/2 (1995). The term “volunteer” was defined as “[a] person recruited by the sponsoring organization who voluntarily performs services at a charitable games event, including participation in the management or operation of a game, as defined in Section 8. 230 **ILCS** 30/2. “Person” was defined as “[a]ny natural individual, a corporation, a partnership, a limited liability company, an organization as

defined in this Section, a qualified organization, a sponsoring organization, any other licensee under this Act, or a volunteer.” 230 ILCS 30/2 (as amended, eff. 1994).

Section 6 of the Act was amended to provide, in part:

No employee, owner, or officer of a supplier may participate in the management or operation of a charitable games event, even if the employee, owner, or officer is also a member, volunteer, or employee of the charitable games licensee. A supplier may not promote or solicit a charitable games event on behalf of a charitable games licensee or qualified organization.

230 ILCS 30/6. Section 8 of the Act was amended to provide, in part:

The conducting of charitable games is subject to the following restrictions:

* * *

(2) No person except a bona fide member or employee of the sponsoring organization, or a volunteer recruited by the sponsoring organization, may participate in the management or operation of the game. A person participates in the management or operation of a charitable game when he or she sells admission tickets at the event; sells, rents, or in any way assists in the selling or renting of chips, scrip, or play money; participates in the conducting of any of the games played during the event, or supervises, directs or instructs anyone conducting a game; or at any time during the hours of the charitable games event counts, handles, or supervises anyone counting or handling any of the proceeds or chips, scrip, or play money at the event. A person who is present to ensure that the games are being conducted in conformance with the rules established by the licensed organization or is present to insure that the equipment is working properly is considered to be participating in the management or operation of a game. Setting up, cleaning up, selling food and drink or providing security for persons or property at the event does not constitute participation in the management or operation of the game.

Only bona fide members, volunteers as defined in Section 2 of this Act, and employees of the sponsoring organization may participate in the management or operation of the games. A person who participates in the management or operation of the games and who is not a

bona fide member, volunteer as defined in Section 2 of this Act, or employee of the sponsoring organization, or who receives remuneration or other compensation either directly or indirectly from any source for participating in the management or operation of the games, or who has participated in the management or operation of more than 4 charitable games events in the calendar year, commits a violation of this Act. *In addition, a licensed organization that utilizes any person described in the preceding sentence commits a violation of this Act.*

(3) No person may receive any remuneration or compensation either directly or indirectly from any source for participating in the management or operation of the game.

* * *

(11) No person other than the sponsoring organization of charitable games must have a proprietary interest in the game promoted.

* * *

(19) No person may participate in the management or operation of games at more than 4 charitable games events in any calendar year.

(20) A supplier may have only one representative present at the charitable games event, for the exclusive purpose of ensuring that its equipment is not damaged.

(21) No employee, owner, or officer of a consultant service hired by a licensed organization to perform services at the event including, but not limited to, security for persons or property at the event or services before the event including, but not limited to, training for volunteers or advertising may participate in the management or operation of the games.

(22) Volunteers as defined in Section 2 of this Act and bona fide members and employees of a sponsoring organization may not receive remuneration or compensation, either directly or indirectly from any source, for participating in the management or operation of games. They may participate in the management or operation of no more than 4 charitable games events, either of the sponsoring organization or any other licensed organization, during a calendar year.

violate the provisions of the CGA, or who violate a Department rule promulgated pursuant to such provisions. 230 **ILCS** 30/12. Section 11 authorizes the imposition of civil penalties on persons who conduct charitable games without a license, after having a license revoked, or on persons who permit illegal gambling to occur where charitable games are being conducted. 230 **ILCS** 30/11. Section 11's civil penalties include: a fine equal to, or confiscation and forfeiture of, the gross proceeds derived from that day's play; forfeiture of charitable games equipment used in the unlicensed games; and, for knowing violations of the CGA's provisions or of the Department's rules pertaining thereto, a fine of \$250.00 for each such violation. *Id.*

Also effective at the end of November, 1994, the legislature amended section 10 of the Act to provide, in part:

The Department of Revenue shall revoke any license when it finds that the licensee or any person connected therewith has violated or is violating the provisions of this Act or any rule promulgated under this Act. However, in his or her discretion, the Director may review the offenses subjecting the licensee to revocation and may issue a suspension. The decision to reduce a revocation to a suspension, and the duration of the suspension, shall be made by taking into account factors that include, but are not limited to, the licensee's previous history of compliance with the Act and its rules, the number, seriousness, and duration of the violations, and the licensee's cooperation in discontinuing and correcting the violations. Violations of Sections 4, 5, 6, 7, and subsection (2) of Section 8 of this Act are considered to be more serious in nature than other violations under this Act. A revocation or suspension shall be in addition to, and not in lieu of, any other civil penalties or assessments that are authorized by this Act. No licensee under this Act, while a charitable game is being conducted, shall knowingly permit the entry into any part of the licensed premises by any person who has been convicted of a violation of Article 28 of the Criminal Code of 1961.

230 **ILCS** 30/10.

The net effect of the 1994 amendments to the CGA was to impose even stricter controls on persons whose activities are regulated by that Act, or who are involved with charitable gaming in Illinois, “*in order to protect not-for-profit organizations and the people of the State of Illinois from the abuses associated with gambling.*” Earnhart v. Director of Illinois Department of Revenue, 191 Ill. App. 3d at 621 (emphasis added). The facts adduced at hearing must be viewed in light of that legislative purpose and intent.

Before I begin those conclusions, I will address the evidentiary value of, that is, the weight to be given, the police reports offered under the certificate of the Director. Department Exs. 4-6.³ Section 8 of the Retailers’ Occupation Tax Act (“ROTA”), which is incorporated into the CGA by section 10 thereof, provides, in part, that “[t]he books, papers, records and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation, or legal proceeding by a reproduced copy thereof under the certificate of the Director.” 35 **ILCS** 120/8. The police reports prepared by the Department’s Bureau of Criminal Investigations are admissible in a Department hearing because they constitute the memoranda of a division within the Department, and they are offered under the certificate of the Director.

The weight to be afforded them, however, depends on the purpose for which they were offered. Generally, police reports are not admissible as substantive evidence because they are prepared in anticipation of litigation (i.e., in anticipation for criminal prosecution), and because they contain conclusions. Jones v. Beker, 260 Ill. App. 3d 481,

³ I am not discussing in this section of the recommendation Department Exhibits 16A-19.

484 (1st Dist. 1994). However, they may be admissible for limited purposes. *Id.* Here, the reports contain the narrative statements and conclusions of the officers making the reports (first-person hearsay), most of whom were not sworn as witnesses in this matter, and therefore, were not made available for cross-examination. They also include the recorded statements of others who, similarly, did not appear as witnesses at hearing (second person hearsay). *See Horace Mann Insurance Co. v. Brown*, 236 Ill. App. 3d 456, 461 (1st Dist. 1992) (each level of hearsay must fall into hearsay exception to be admissible as substantive evidence).

There is no indication the Department offered the reports for a non-hearsay purpose. For example, they were not offered to show how the investigation of ABC was conducted, or to identify the total number of persons who were arrested at, and/or plead guilty to offenses which occurred during, the events which form the basis for this revocation proceeding. They were not offered as the past recollection recorded of an officer who was unavailable due to a lack of memory about the incident described in the report. Instead, they were principally offered to establish the truth of the various matters asserted or described within them. *See* Department's Post Hearing Brief ("Department's Brief"), pp. 9, 19 (citing to statements of persons arrested to support claim that declarants worked for ABC); *but see City of Evanston v. Piotrowicz*, 20 Ill. 2d 512, 518-19 (1960) (out-of court statements by one claimed to be an agent of another, not made in presence of principal and not subsequently approved by principal, are not admissible to prove agency relationship). They were offered as hearsay, pure and simple. *People v. Lawler*, 142 Ill. 2d 548 (1991).

The Administrative Procedures Act, pursuant to which Department hearings are

conducted (*see* 230 **ILCS** 30/13; 35 **ILCS** 120/11a), provides that, “[t]he rule of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.” 5 **ILCS** 100/10-40(a). Hearsay is not a technical rule of evidence. Grand Liquor Co., Inc. v. Department of Revenue, 67 Ill. 2d 195 (1977). Investigative police reports, moreover, do not constitute the business records of a police department. *Compare* Tr. pp. 496-97 (Gaida being asked foundational questions for business records) *with* 725 **ILCS** 5/115-5(c)(2); People v. Tsombanidis, 235 Ill. App. 3d 823, 835 (1st Dist. 1992); *see also* M. Graham, Handbook of Illinois Evidence § 803.10 (Business Records) p. 728, § 803.13 (Police Reports) pp. 745-47.

There is simply no way to test the accuracy of the statements contained within the police reports without cross-examining the officers who made them, not to mention the persons whose statements were recorded in the reports by the officers who prepared them. In fact, the proponent’s own witness, A. DOE, testified that he was lying when he gave a statement to BCI officers at or about the time of his arrest at an event identified in the Notice of Revocation, and which statement was later recorded, in summary, in Department exhibit number 6. Department Ex. 6, p. 5, attachment 8 thereto, p. 3; Tr. p. 169 (A. DOE). Given that credible hearing testimony, I find no reason to conclude that reasonably prudent men would (or should) rely on the veracity of such statements (even if accurately summarized) in those police reports. Therefore, I give no weight to the hearsay included in the narrative sections of Department exhibit numbers 4 through 6. Moreover, no finding of fact in this recommendation is based on any such narrative

statement.⁴

Conclusions Regarding Who Employed M. DOE:

The Department introduced Treasury Department forms W-2 for different persons who, both sides claimed, worked either for ABC or for FICTITIOUS BUSINESS on the dates of the charitable games events identified in the Notices of Revocation. *See* Department Ex. 7-9. Department exhibit number 7 shows that ABC reported to the IRS that it employed M. DOE (PRESIDENT) M. DOE during 1995, and that it paid wages to her and withheld taxes regarding her employment in 1995. Department Ex. 7. Depending on which version one believes, PRESIDENT either didn't know when M. DOE, his daughter, left his company's employ, or she might have left ABC's employ in February or March of 1995. Tr. pp. 306, 343 (PRESIDENT).

Sue J. DOE testified that M. DOE was present during charitable games events for which she hired ABC, and which events were included in the Notices of Revocation. Tr. p. 84 (J. DOE). Both J. DOE and D. DOE believed M. DOE was a ABC employee when speaking with M. DOE, or when she worked at the games identified in the Notices of Revocation. Tr. pp. 84-85, 115-16 (J. DOE), pp. 135-37, 141-42 (D. DOE). J. DOE saw M. DOE collect chips from the tables at the games at which she was present. Tr. p. 85 (J. DOE).

The evidence introduced at hearing shows that ABC employed M. DOE in 1995. Department Ex. 7. The persons associated with the charitable games sponsors who hired ABC, and who interacted with M. DOE regarding those charitable games, believed or

⁴ I have, however, based findings of fact on written materials included as attachments or exhibits to those reports, e.g., charitable games supplier or license applications.

assumed that she was working for ABC during their dealings with her. *See* Tr. pp. 84-85, 115-16 (J. DOE), pp. 135-37, 141-42, 145 (D. DOE). If M. DOE was no longer employed by ABC on the dates identified on the Notices of Revocation, ABC should have had available its own business records, either payroll records or otherwise, to identify when the president's daughter stopped working for the company. But no such records were introduced. Moreover, a department employee testified that he conducted as search of the Department's records and of ABC's and FICTITIOUS BUSINESS' records, and discovered no documents to corroborate that M. DOE was ever an "on the books" employee of FICTITIOUS BUSINESS. *See* Tr. p. 491 (Gaida). Since no documentary evidence was introduced to corroborate PRESIDENT' interested testimony that his daughter M. DOE was working for somebody other than ABC at the events identified in the Notices of Revocation, I conclude that ABC employed M. DOE at those events. My conclusion that ABC employed M. DOE does not mean that I do not believe that M. DOE could have also been working for FICTITIOUS BUSINESS during the same period of time.

When M. DOE, as a ABC employee, collected chips at the events held by the ABC Jaycees identified on the Notices of Revocation (*see* Tr. p. 85 (J. DOE), p. 157 (A. DOE); Department Ex. 1), ABC performed acts prohibited by the CGA. 230 ILCS 30/6.

Conclusions Regarding the Relationship Between ABC and FICTITIOUS BUSINESS:

At hearing, PRESIDENT testified that ABC used FICTITIOUS BUSINESS as a consultant. Tr. p. 445 (PRESIDENT). Specifically, PRESIDENT was asked the following questions and gave the following answers:

Q: Why did you use FICTITIOUS BUSINESS?

A: All the people involved with FICTITIOUS BUSINESS, were knowledgeable people in charitable games, knew the rules and regs, knew the paperwork scheme of it and were basically doing a good job doing what they were doing. And they were doing things that the supplier could no longer do.

Q: From your standpoint as an observer, did FICTITIOUS BUSINESS appear to assist in these casino nights?

A: FICTITIOUS BUSINESS, as far as I know, did a great job.

Tr. p. 447 (PRESIDENT).

Q: ... the main employees of FICTITIOUS BUSINESS were employees that used to work for ABC Casino Players; you knew that, right?

A: Yes.

Q: The main employees once again was your sister-in-law and your daughter, right?

A: Exactly.

Q: So when the company was formed, was there any benefit to your company, ABC Casino Players, to have FICTITIOUS BUSINESS formed?

A: Probably so.

Q: Even though FICTITIOUS BUSINESS was formed, they also could not manage the games, is that correct?

A: No.

Q: No what?

A: They could not manage the games.

Q In fact –

A: Well, they could if they volunteered for a specific charity.

Q: Say that again sir.

A: They could as a volunteer for a specific charity. They could volunteer because they were not a supplier. They could actually volunteer for one of their charities.

Q: If they were on the volunteer list?

A: Exactly.

Tr. pp. 298-99 (PRESIDENT).

Of course, PRESIDENT' final conclusion is incorrect. Even if employees of

FICTITIOUS BUSINESS had been recruited by a charitable sponsor to volunteer as dealers or to otherwise participate in the management or operation of such games (and even if they had been identified as volunteers on the lists submitted by the charitable sponsor), those employees could still not take part in the management or operation of the games because FICTITIOUS BUSINESS was paid for the services it provided at those games. PRESIDENT, moreover, had personal knowledge that FICTITIOUS BUSINESS would be paid for its services at those games; in d, PRESIDENT arranged that FICTITIOUS BUSINESS get paid for its services. *See* Tr. pp. 80-84, 98-100 (J. DOE). I find PRESIDENT' testimony that he didn't care if FICTITIOUS BUSINESS received payment (*see* Tr. p. 312), incredible.

Sue J. DOE' and D. DOE's testimony showed that when charities hired ABC, they would also get, and pay for, the services of FICTITIOUS BUSINESS. D. DOE testified that she received information regarding FICTITIOUS BUSINESS in the same mailings she received from ABC. Tr. pp. 141-42 (D. DOE). She believed that she was working with ABC regarding the charitable games events for which she paid both ABC and FICTITIOUS BUSINESS. *Id.* Neither D. DOE, nor JANE DOE ever contacted FICTITIOUS BUSINESS to hire its services regarding the charitable gaming events at which ABC is alleged to have committed acts prohibited by the CGA. *See* Tr. pp. 80-84, 98-100 (J. DOE), pp. 138, 141-42 (D. DOE). The evidence shows that ABC, and not the individual charitable sponsor, was the principal for whom FICTITIOUS BUSINESS was performing acts at the charitable games events included in the Notices of Revocation.

What acts did FICTITIOUS BUSINESS perform at the charitable games events? R. DOE, for one, participated in the management or operation of the games on behalf of

FICTITIOUS BUSINESS by directing persons how to conduct those games. At hearing, R. DOE testified he performed such acts at games held on 6/2/95, which were sponsored by the ABC Jaycees, and at other charitable games events. Tr. pp. 215 (“I had basically walked around with people who were in charge of the Jaycees. ... And none of the women seemed to know what exactly what they were supposed to do. So I w[a]ndered around with them, and, you know, said, ‘this is what you have to do.’”), 223-24, 241-44, 260 (R. DOE).

A. DOE, for another, testified that he had been hired by B. DOE and M. DOE to work as a dealer (see Tr. pp. 149), and that he, in fact, worked and received compensation for dealing at charitable games events, including at least one event identified in the Notices of Revocation. *See* Tr. pp. 159-60, 175, 180 (A. DOE). More importantly, A. DOE testified that PRESIDENT, B. DOE, M. DOE, and other persons were present at a meeting held in March 1995. Tr. p. 161 (A. DOE). The others present at that meeting were persons with whom A. DOE worked as compensated dealers at charitable games events. Tr. pp. 149, 152, 161 (A. DOE). The meeting was held at XYZ COMPANY, which is one of the locations where ABC stores the gaming equipment it supplies. Tr. pp. 161-62, 180-81 (A. DOE); Department Ex. 4, attachment 4 (supplier’s license application). A. DOE testified that PRESIDENT spoke to those present at that meeting, to encourage them to work harder to increase the revenue production at charitable games. Tr. p. 162 (A. DOE). While PRESIDENT denied being at that meeting (Tr. p. 308 (PRESIDENT)), I found A. DOE’s testimony regarding that event to be competent, forthright and credible.

The evidence introduced at hearing leads me to conclude that PRESIDENT, the

president of ABC and the person who testified that he used FICTITIOUS BUSINESS, had personal knowledge that FICTITIOUS BUSINESS would arrange to have dealers work – and get paid – at the charitable games events at which ABC arranged to use FICTITIOUS BUSINESS’ services. That conclusion is also supported by J. DOE’ testimony that she told PRESIDENT that the Jaycees would not have volunteers available to deal at Jaycees charitable games events, PRESIDENT’ response to her (*see* Tr. p. 82 (J. DOE)), and the fact that persons who were not bona fide volunteers, in fact, appeared at those events to participate in the management or operation of the games. Tr. pp. 82-83 (J. DOE).

J. DOE testimony in that regard is strikingly similar to D. DOE’s testimony regarding the conversation she had with M. DOE, before CWS’s scheduled charitable games events. D. DOE also informed M. DOE that CWS would not be able to staff gaming tables with volunteers, after which M. DOE told her that people would call D. DOE to give her their names as dealers at the upcoming events. Tr. p. 137 (D. DOE). D. DOE, in fact, received such calls, and D. DOE compiled a list of the persons who called her, and sent that list to ABC. *Id.*; Department Ex. 5, attachment 3 (7/3/95 letter from IDOR to CWS re: list of additional workers received by IDOR on 6/27/95 for CWS event scheduled for 7/6/95, and copy of that list). That list bore the names of persons A. DOE testified he knew worked with him as dealers at charitable games events at which ABC and FICTITIOUS BUSINESS were hired to participate. *Compare id. with* Tr. pp. 149, 152 (A. DOE identifying his brother (ALLEN DOE), JOE DOE, JAY DOE, and others as dealers).

That conclusion is also corroborated by PRESIDENT’ own statements in the

letter he wrote and sent, via facsimile, to EMPLOYEE, at FICTITIOUS BUSINESS. Department Ex. 2. That fax was dated 2/15/95, and in it, PRESIDENT discussed charitable games events scheduled to be held on July 31, 1995, and August 3, 1995. *Id.* That letter includes the following sentence, “The volunteer dealers will also be in black slacks with white shirts and have arm bands on to give the event the Vegas look.” *Id.* That letter, which bears PRESIDENT’ signature, shows that PRESIDENT knew, more than 4 months before the events were scheduled, how the dealers would be dressed at the scheduled events. PRESIDENT did not testify that the CCB informed him how their volunteer dealers would be dressed. Unless PRESIDENT knew he could control how the dealers would dress (because they worked “off the books” for ABC or for FICTITIOUS BUSINESS), how could PRESIDENT have had such knowledge?

I conclude that PRESIDENT, the sole officer of ABC, had personal knowledge that FICTITIOUS BUSINESS would use persons who were not bona fide volunteers to participate in the management or operation of the charitable games for which ABC used FICTITIOUS BUSINESS’s services, and that PRESIDENT also knew that such persons would be paid, either directly or indirectly, for their participation. Additionally, and since I have already concluded that M. DOE was a ABC employee, I conclude that when M. DOE hired A. DOE to work as a dealer, in exchange for tips and/or other compensation, at charitable games events, including events identified on the Notices of Revocation (see Tr. pp. 149, 164-67, 170 (A. DOE)), that act is attributable to ABC.

In sum, I conclude that ABC performed acts prohibited by the CGA when it used the services of FICTITIOUS BUSINESS at the events at issue, because PRESIDENT knew that FICTITIOUS BUSINESS would pay, either directly, or indirectly, persons

who participated in the management or operation of those charitable games. 230 ILCS 30/8(2) (“In addition, a licensed organization that utilizes any person described in the preceding sentence commits a violation of this Act.”), 30/8(3).

Conclusions Regarding the Progressive Jackpot Games, and the Approval of Checks by ABC, at the ABC Jaycees Events:

J. DOE testified that PRESIDENT directed her to write checks to TEMPLE regarding games played at the charitable games events. Tr. pp. 97-98; Department Ex. 3 (checks written by J. DOE dated 3/25/95 and 5/13/95). J. DOE wrote checks to TEMPLE because of “a thing called ‘progressive jackpot.’” Tr. p. 97 (J. DOE). While J. DOE could not describe how the progressive jackpot games worked, PRESIDENT was able to explain the way the game was played perfectly. Tr. p. 348 (PRESIDENT). The game was also described in the flyer PRESIDENT disclaimed as having anything to do with ABC, even though it was published under the title, “ABC Casino Players News.” Department Ex. 13, p. 2.

Notwithstanding J. DOE’ belief that the game was a raffle, and the Department’s claim that it was an illegal raffle, I cannot conclude that it was an illegal raffle. No evidence was introduced to indicate that county officials had not approved a raffle to be conducted at the charitable games events sponsored by the ABC Jaycees in 1995. 230 ILCS 15/2 (governing body of counties in Illinois license organizations eligible to operate raffles).

What the evidence adduced at hearing shows, however, is that it was ABC or FICTITIOUS BUSINESS that was conducting the progressive jackpot games, and not the ABC Jaycees. J. DOE, the person who was identified on the ABC Jaycees license as being “the person in charge of conducting the charitable games” (*see* Department Ex. 4,

attachment 3 (question #16 on form RCG-1)), had no idea how the progressive jackpot game worked. *See* Tr. p. 97 (J. DOE). Moreover, she evinced no personal knowledge of any agreement the Jaycees had with TEMPLE to pool or accumulate proceeds from the progressive jackpot side bets. J. DOE wrote ABC Jaycee checks to TEMPLE, not because she believed the ABC Jaycees had an agreement with TEMPLE to share the proceeds of games being played at ABC Jaycee charitable games events, but because PRESIDENT told her to write those checks. Tr. p. 98 (J. DOE).

PRESIDENT, in contrast, knew exactly how the game worked. Tr. p. 348 (PRESIDENT). PRESIDENT, however, claimed that he didn't direct J. DOE to write checks to TEMPLE, and that J. DOE must have him confused with someone from FICTITIOUS BUSINESS. Tr. pp. 347-49 (PRESIDENT). PRESIDENT, in fact, attributes his personal knowledge of how the progressive games were conducted to the fact that "[he'd] seen how it worked through FICTITIOUS BUSINESS." Tr. p. 347 (PRESIDENT).

PRESIDENT can't have it both ways. He cannot be understood to know precisely how FICTITIOUS BUSINESS performed the services for which ABC hired it, knowingly accept the admitted benefits to ABC by having FICTITIOUS BUSINESS perform such services (*see* Tr. pp. 298, 306-07 (PRESIDENT)), and yet disavow whatever acts FICTITIOUS BUSINESS may have performed which were prohibited by the CGA. Even if one believes PRESIDENT's testimony regarding why he was competent to describe how the progressive jackpot games were conducted at the charitable games events identified on the Notices of Revocation, then he, as ABC's president, had full knowledge that FICTITIOUS BUSINESS was conducting those

games. I find J. DOE' testimony regarding who told her to write checks to TEMPLE more credible than PRESIDENT' denial. By directing J. DOE to write those checks, PRESIDENT, as ABC's president, was "participating in the conducting of any of the games played during the event", an act prohibited by the CGA. 230 ILCS 30/8(2).

The evidence at hearing also shows that PRESIDENT authorized personal checks and credit cards at events held by the ABC Jaycees, including the events identified in the Notices of Revocation. Tr. pp. 85-87, 96, 118-19 (J. DOE); Department Ex. 1. At hearing, PRESIDENT admitted that he had an arrangement with sponsoring organizations to cover checks written by persons if he had the opportunity to approve the persons who wanted to cash a check in order to purchase chips at charitable games events. Specifically, PRESIDENT testified as follows:

Q: Did you have some kind of policy that you had to authorize checks, referring to the Jaycees?

A: No. It was something that we basically that I would do for any organization based on my knowing the person that I wanted to write the check. If I knew that they were a regular attendee of charitable games and wanted \$100 check cashed, I would approve that check based on – I wouldn't approve it. I would put my initials on it and say, If this check comes back, "I'll help you get the money. I'll basically help you stand good for the check."

Q: So you'd stand by the check and basically vouch for the person who wrote it?

A: Yes.

Q: Was the charity required to come to you for this?

A: No. In fact I would tell the charity when we were setting up, I said, if you know anybody here that's sympathetic to your cause that's coming here to support Child Welfare or whatever the organization was and they want to write a check and if you want to check it, that behooves you to do that. But the checks are made out to the charity and the more revenue you can generate the better it is actually. You're going to win about 30 percent of all the money that comes through the door. So the more

money you can get in the till, the more money they can make.

Q: Was the charity in any way put at a disadvantage by you doing that?

A: I can't see it. All they do is make more revenue.

Q: How so?

A: Because if somebody is out of money or – case in point, you're at a banquet hall or something or a hotel where somebody is at another function and they happen to see charitable games going on and they walk in the room and they go, "Oh my God, if I'd known this, I would have brought some money." And they see me that they know. "Hey, Jim, I didn't know you were here today. Can I get a check cashed here? I said, "I think they'll cash your check at the bank." Put my initials on it and they go up there and they'll take it because I got my initials on it because they know they have someone to come back to.

Q: They have someone to come back to, meaning the charity?

A: The charity.

Tr. pp. 438-40 (PRESIDENT); *see also* Tr. pp. 472-73 (PRESIDENT).

The Department argues that by approving, or standing behind, the checks and credit cards PRESIDENT or his daughter approved or authorized, ABC extended credit to persons playing charitable games. *See* Department's Brief, p. 20. I cannot agree. Instead, I agree with ABC's argument that the "no credit" subsection of section 30/8 of the CGA was intended to prohibit the use of IOU's. *See* ABC's Response, p. 8. The Department, moreover, in a private letter ruling, informed another charitable games licensee that "[t]here is nothing in the Charitable Games Act which would prevent you [the sponsoring licensee] from allowing players to purchase chips with credit cards or to use credit cards to obtain cash with which to buy chips." Private Letter Ruling 93-0585 (Nov. 11, 1993).

The Department also argues that ABC's arrangement to backstop the checks PRESIDENT or his daughter authorized is an act prohibited by the exclusive purpose

provision found in section 30/8 of the CGA. Department's Brief, p. 20. I agree. 230
ILCS 30/8(20). I also believe that ABC's actions constituted a direction or supervision
of persons working at the bank located at the charitable games events. ABC's
arrangement made it the entity which would determine who would be allowed to cash a
check or get an advance from the player's credit card provider. J. DOE testified
unequivocally that the ABC Jaycees would not cash a check without ABC's arrangement
to cover such checks, because the Jaycees did not want to suffer a loss should a check
bounce. Tr. pp. 118-19 (J. DOE). The evidence also strongly suggested that the charities
themselves did not have a credit card machine with which to effect or authorize a credit
card transaction. *Id.*; Tr. pp. 472-73 (PRESIDENT). J. DOE, moreover, testified that
ABC never gave her an 800 number to check a person's credit background. *See* Tr. p. 119
(J. DOE).

Nor can I conclude that ABC was acting altruistically when PRESIDENT
approached the sponsoring licensee to offer the arrangement he described at hearing. *See*
Tr. pp. 438-40 (PRESIDENT). The evidence at hearing was that ABC offered its
supplier services at a flat rate, but if the gross receipts the charity received at the end of
the event were less than expected, PRESIDENT would reduce ABC's fee so that the
charity would never make less than ABC. Tr. pp. 423-24 (PRESIDENT). As a person
knowledgeable of the gaming industry (*see* Tr. p. 332 (PRESIDENT testified that ABC
had been engaged in gaming junkets since the 1970's)), PRESIDENT knew that the
charity's gross receipts at the end of the event would likely increase as did the amount of
chips purchased. Tr. pp. 438-39 (PRESIDENT). By agreeing to authorize checks or
credit card purchases of chips, ABC ensured that the amount of money "through the

door” increased, and that ABC, thereby, would be in a better position to realize the full amount of its fee. Coupled with A. DOE’s testimony that he would get paid for dealing at charitable games events, in part, by being allowed to keep excess revenues his table would receive over an hourly quota, ABC’s arrangement also helped ensure that FICTITIOUS BUSINESS’ “off the books” employee/dealers would earn enough to want to continue to return at such events.

When ABC conducted credit checks of persons who wanted to purchase chips with a check or credit card, and authorized those transactions by initialing and/or approving such checks or advances, ABC was directing and/or supervising persons at the bank (i.e., it was “supervis[ing] ... anyone ... handling any of the ... chips”) regarding who should be allowed to purchase chips with such checks or credit cards. 230 ILCS 30/8(2). I conclude that ABC’s conduct constitutes participation in the operation or management of the games.

Conclusions Regarding the 7/31/95 Event Sponsored By the CCB:

JIM DOE testified that PRESIDENT approached him at a casino night held at the Pheasant Run Inn on July 31, 1995, and asked him to run a roulette table where JIM DOE and others were standing. Tr. pp. 25-26 (JIM DOE). Specifically, JIM DOE testified that PRESIDENT asked if he knew how the game of roulette operated, briefly tested JIM DOE on the payouts for the game, and then brought him chips to use to conduct the game. Tr. pp. 26-28 (JIM DOE). Shortly after he started running the game, JIM DOE was approached by BCI officers who were conducting an inspection of the games. During an interview with those officers, JIM DOE recounted how he came to be operating the roulette game, and pointed out PRESIDENT to those officers as the man

who asked him to conduct the game, and who brought him the chips to play the game. Tr. pp. 28-29, 34, 40-41 (JIM DOE). At hearing, JIM DOE again identified PRESIDENT as the person who asked him to conduct the roulette game and brought him the chips to conduct that game. Tr. p. 26.

PRESIDENT denied bringing JIM DOE any chips that night (Tr. p. 460 (PRESIDENT)), although he conceded that he could have asked him to start the roulette game because he looked like a member of the CCB, the charitable games sponsor. Tr. pp. 459-60 (PRESIDENT). In its briefs, ABC contends that the 7/31/95 event identified in the Notices of Revocation should not be deemed to be a charitable games event, and should not be considered gambling. *See* ABC's Post-Hearing Brief ("ABC's Brief"), pp. 11-12; ABC's Post-Hearing Response Brief ("ABC's Reply"), pp. 7-8. ABC argues that "[t]he fact that someone, as a precaution perhaps, obtained a license for that particular event, does not mean that the group is subject to the terms of the Act. The fact remains this is not the type of event the Act was enacted to regulate." ABC's Reply, p. 8.

I disagree, strongly. Section 28-1(a)(1) of the Criminal Code provides that: "A person commits gambling when he: ... [o]perates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gambling device" 720 ILCS 5/28-1(a)(3). One of the acts excepted from the definition of gambling is the act of participating in "[c]haritable games when conducted in accordance with the Charitable Games Act". 720 ILCS 5/28-1(b)(9). The CCB did not, "as a precaution perhaps, obtain[] a license for [the 7/31/95] event". Rather, it seems more reasonable that the CCB obtained a license because it knew that if it "operate[d] a gambling device" at an event not conducted in accordance with the CGA, it would be

committing the offense of gambling. 720 ILCS 5/28-1(a)(3), (b)(9).

A “gambling device” is “any mechanism, furniture, fixture, equipment or other device designed primarily for use in a gambling place.” 720 ILCS 5/28-2(a). In PRESIDENT’ 2/15/95 letter to EMPLOYEE, PRESIDENT wrote that ABC would supply, *inter alia*, “10 Blackjack tables, 2 Crap tables, 1 Roulette table, 1 Money wheel and 1 Caribbean stud poker table” for two nights for the price of \$3,330 per night. Department Ex. 2. On July 31, 1995, ABC either performed the lawful act of supplying equipment for a charitable games event to be conducted in accordance with the CGA, or it is now making an admission that it owned, bargained for the lease of, and rented the gambling devices PRESIDENT described in his 2/15/95 letter, for use at an event ABC knew would not be conducted in accordance with the CGA. *Id.*; 720 ILCS 5/28-1(a)(3); 720 ILCS 5/28-5(a) (authorizing seizure and forfeiture of gambling devices where “an individual with an ownership interest in said device knows of the unlawful use of the device”).

JIM DOE’s testimony that PRESIDENT asked him to conduct the roulette game on that night, and that PRESIDENT brought him chips to use when playing that game, is evidence sufficient to show that PRESIDENT, an officer of ABC, “participate[d] in the conducting of any of the games played during the event”. It also supports a conclusion that PRESIDENT “direct[ed someone] ... conducting a game,” and that he, “during the hours of the charitable games event ... handle[d] ... any of the proceeds or chips, scrip, or play money at the event.” Each of those acts is prohibited by the CGA. 230 ILCS 30/8(2).

I conclude that the Department has shown that ABC has engaged in acts

prohibited by the CGA, and that ABC's supplier's license should be revoked.

Conclusions Regarding the Length of Revocation:

The evidence ABC introduced during the second part of this bifurcated hearing did not persuade me to recommend that the Director suspend, instead of revoke, ABC's supplier's license. I recommend ABC's license be revoked for the full period allowed by law.
